THE GETTYSBURG RESERVATION. — In one of his first opinions at Washington Mr. Justice Peckham has had an opportunity of showing how he deals with cases which call for a decision as to the constitutionality of a statute. At the present day when there seems to be a tendency to forget that the courts have only a limited power in dealing with acts of the legislature, it is a matter of some significance that the latest member of the Supreme Court should assume a conservative, discriminating attitude, and should declare, as did the earliest interpreters of the Constitution, that the court should interfere only in a clear case. The duty and the discretion of making laws has been intrusted to the legislature, and an act, said Mr. Justice Peckham, "is presumed to be valid unless its invalidity is plain and apparent. No presumption of invalidity can be indulged in. It must be shown clearly and unmistakably." (*United States* v. *Gettysburg Electric Ry. Co.*, 16 Sup. Ct. Rep. 427.)

The question before the court concerned the constitutionality of an Act of Congress providing for the condemnation of portions of the battlefield at Gettysburg and for the erection of tablets to mark the lines of the battle "with reference to the study and correct understanding of the battle." It was objected that there was no clause in the Constitution which gave Congress the right to condemn land for such a purpose, but the court decided that express authority was not necessary. "The power," it was said, "to condemn for this purpose need not be plainly and unmistakably deduced from any one of the particularly specified powers. Any number of these powers may be grouped together, and an inference from them all may be drawn that the power claimed has been conferred." While the result is acceptable, it would seem that the court might have avoided this somewhat unfortunate appearance of making something out of a sum of nothings; the case, it is submitted, might have been put on the broad ground that this falls within those powers which belong to the national government by the very reason of its being a government. In creating the national government, the Constitution necessarily conferred those powers which governments generally possess for their administration and self-protection; and it may well be said that the fostering of a national spirit is a proper function for a government whose strength lies in the loyalty of its citizens. If, however, a specific authority from the Constitution were still called for, the power "to raise and support armies" might well, as the court intimates, include the power to cultivate patriotism and to aid the study of military tactics.

COLLEGE DEGREES — JUDICIAL INTERFERENCE WITH FACULTY ACTION. — The power of college authorities in the matter of granting degrees is generally regarded as absolute. For a disappointed student to take his case to the courts is therefore somewhat surprising. Yet this has occasionally been done, and a comparison of the few decisions is interesting. Curiously enough, the New York Supreme Court has been called upon three times within five years to pass on an application for a mandamus to compel the granting of a degree to a student. In *People* v. *N. Y. Homœopathic Medical College &c.*, 20 N. Y. Supp. 379, and in *People* v. *N. Y. Law School*, 68 Hun, 118, the application was refused, the court remarking, in the latter case, that a college faculty is vested with broad discretion as to the persons to be recommended for a degree, and that the case must be an extraordinary one to justify judicial interference. On

the other hand, in *People* v. *Bellevue Hospital Medical College*, 60 Hun, 107, the mandamus was granted, on the ground that the refusal to bestow the degree was arbitrary, and that it was not a case of the exercise of discretion. See 5 HARVARD LAW REVIEW, 205.

The statement of the court in the last named case to the effect that, when a student matriculates according to the terms of the published circular of the college, a contract arises, seems open to objection. That the relation between student and faculty is not contractual has recently been decided in England. In the case of *Green* v. *Master and Fellows of St. Peter's College, Cambridge*, reported in 31 Law Journal, 119, the plaintiff, who had been expelled from the defendants' college, brought an action for breach of contract, advancing the proposition that a student, on entering a college, enters into a contract with the college authorities, who agree, in consideration of his obeying all lawful rules and paying fees, to allow him to reside at the college for the length of time necessary for obtaining a degree, and to do all things requisite to enable him to obtain such degree. Mr. Justice Wills held that there was clearly no such contract, and that the case did not justify judicial interference. This decision, which finds some support in the interesting case of *Thomson* v. *University of London*, 33 Law J. Rep. Ch. 625, seems eminently sound.

That courts are very loath to interfere with the exercise of discretionary powers by college authorities is shown by several American cases in which aggrieved students have vainly sought relief at law from disciplinary measures adopted by faculties. See *People* v. *Wheaton College*, 40 Ill. 186; *North* v. *Trustees of University of Illinois*, 137 Ill. 296; *Dunn's Case*, 9 Pa. Co. Ct. Rep. 417.

People v. *Bellevue Hospital Medical College*, *supra*, appears to stand alone. Whether a mandamus should issue even in such a case may perhaps be doubted. And yet it seems only just that the student should have a remedy. Fortunately, the rarity of such arbitrary action on the part of college authorities renders the question one of speculative rather than practical interest.

JUDICIAL OPINIONS LONG DRAWN OUT. — The opinion of the House of Lords in *Angus* v. *Dalton*, 6 Ap. Cas. 740, occupies an unusually large space in the reports; but the striking importance of the case is certainly ample justification for such exhaustive treatment. Where, however, without any such justification, some commonplace question is handled at equal length, one may well find fault. Unfortunately a tendency in this direction is only too noticeable in many of our State courts. A conspicuous example is furnished by the case of *Ry. Co.* v. *Transportation & Mfg. Co.*, 27 Fla. 1, which occupies one hundred and sixty-one pages of the report, one hundred and nine of which are given up to the opinions of the two judges. As far as can be gleaned from the paragraphs of the eight-page head-note, the points involved were not of especial importance. Lord Mansfield used to say that he made his opinions long for the benefit of students. That was a century ago. In the midst of the present overwhelming flood of legal literature, the judge who condenses his opinions as rigorously as is at all consistent with thoroughness is conferring a benefit on the entire profession.